APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,853	06/05/2001	Larry James Hughes	8552	5078

			EXAMINER
27752	7590	02/10/2006	VAN BRAMER, JOHN W

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ART UNIT	PAPER NUMBER
3622	

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Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/874,853	HUGHES ET AL.
	Examiner	Art Unit	
	John Van Bramer	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>05 June 2001</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-38</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-38</u> is/are rejected.

7)☒ Claim(s) <u>6</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>05 June 2001</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date <u>021102</u>.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1.   Claim 6 is objected to under 37 CFR 1.75(c), as being of improper dependent

form for failing to further limit the subject matter of a previous claim. Applicant is

required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper

dependent form, or rewrite the claim(s) in independent form. Claim 6 provides no

limitations that have not been previously established in claim 1 from which it

depends. Claim 1 and 6 both recite a "research module" communicating with a

"panelist". Claim 6 is configured to "provide direct interfacing with a panelist", while

Claim 1 is configured to directly interface with the panelist by allowing "dynamic

control and manipulation of the virtual purchase environment" and "receiving panelist

input".

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

3.   Claims 1 - 21 and 35 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter. Claims 1, 14 and 35 are

directed towards a computer program per se, which is considered functional

descriptive material and therefore is not patentable (See MPEP 2106(IV)(B)(1)(a)).

Claims 2-13 and 15 – 21 suffer from the same deficiencies.

4.   Claims 37 and 38 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter. It is unclear what Claim 37 is

other than an improper data structure claim (It looks more like a computer medium

claim from Claim 31). The claim as currently presented is considered functional

descriptive material and therefore is not patentable (See MPEP 2106(IV)(B)(1)(a)).

Claim 38 suffers from the same deficiencies.

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

6.   Claims 1-6 and 14, 19, and 21 are rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim

the subject matter which applicant regards as the invention. Claims 1 and 14 are

directed to a "system" in the preamble; however, the steps in the body of the claim

fail to add any structure to the system. The steps are directed towards "modules"

and "interfaces", which are programs per se and not structural components.

7.   Claims 37 and 38 claim a data structure but there is not a data structure

contained in the body of the claim. A data structure is "a physical or logical

relationship among data elements, designed to support specific data manipulation

functions" (See MPEP 2106(IV)(B)(1))

Claim Rejections - 35 USC § 102

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102

that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9.   Claims 1 - 38 are rejected under 35 U.S.C. 102(b) as being anticipated by

Blinn et al. (U.S. Patent Number: 6,058,373).

Claim 1: Blinn discloses an in-channel marketing and product testing system

comprising:

    a. A purchase environment module having instructions for generating a

       virtual purchase environment comprising a plurality of competitive

       products. (Col. 12, line 63 through Col. 13, line 34)

    b. A panelist interface module configured to receive panelist input from a

       panelist interface, said panelist interface module arranged in selective

       communication with said purchase environment module and configured to

       receive and display said virtual purchase environment. (Col 13, line 35

       through Col 14, line 25)

    c. A research module in communication with said panelist interface, the

       research module configured to allow dynamic control and manipulation of

       the virtual purchase environment, and configured to receive panelist input

       from said panelist interface module. (Col. 15, line 48 through Col 17, line

       35)

Claim 2: Blinn discloses the marketing and product testing system of claim

1, wherein said research module further comprises research instruments configured

to facilitate analysis of said panelist input. (Col 23, lines 16 – 42)

Claim 3: Blinn discloses the marketing and product testing system of claim

1, further comprising a fulfillment module having executable instructions configured

to receive purchase orders entered by a panelist through said panelist interface. (Col

36, line 65 through Col. 38, line 37)

Claim 4: Blinn discloses the marketing and product testing system of claim

3, further comprising a delivery module having executable instructions to implement

the delivery of products according to said purchase orders. (Col 36, line 65 through

Col. 38, line 37)

Claim 5: Blinn discloses the marketing and product testing system of claim

3, further comprising a inventory module having executable instructions to track and

maintain inventory availability within said system. (Col 36, line 65 through Col. 38,

line 37)

Claim 6: Blinn discloses the marketing and product testing system of claim

1, wherein said research module is in selective communication with said panelist

interface and configured to provide direct interfacing with a panelist (Col. 15, line 48

through Col 17, line 35)

Claim 7: Blinn discloses the marketing and product testing system of claim

1, wherein said system is configured to allow simultaneous communication between

a plurality of panelist interfaces and said purchase environment module. (Col 8, lines 11- 17)

Claim 8:   Blinn discloses the marketing and product testing system of claim 1, wherein said system is configured to provide a predetermined virtual purchase environment. (Col 13, line 59 through Col 14, line 6)

Claim 9:   Blinn discloses the marketing and product testing system of claim 8, wherein said predetermined virtual purchase environment simulates an existing shopping facility. (Col 14, lines 7 – 25)

Claim 10:   Blinn discloses the marketing and product testing system of claim 1, wherein said system is configured to simultaneously provide a plurality of predetermined virtual purchase environments to a plurality of panelists. (Col 12, line 63 through Col 13, line 8)

Claim 11:   Blinn discloses the marketing and product testing system of claim 1, wherein said panelist's input comprises at least one of the following: answers to one or more questions provided by a researcher and panelist interactions within said virtual purchase environment. (Col 13, line 35 through Col 14, line 25)

Claim 12:   Blinn discloses the marketing and product testing system of claim 1, wherein said virtual purchase environment displays at least one of following shopping stimulus: signage, advertisements, demonstration stations and coupon books. (Col 17, lines 22 – 35)

Claim 13:   Blinn discloses the marketing and product testing system of claim 1, wherein said system further comprises tools for allowing real-time

manipulation of the virtual purchase environment. (Col 7, line 53 through Col 8, line 62)

Claim 14:   Blinn discloses an in-channel marketing and product testing system comprising:

a. A purchase environment module having instructions for generating a virtual purchase environment comprising a plurality of competitive products. (Col. 12, line 63 through Col. 13, line 34)

b. A panelist interface configured to receive panelist input and configured to receive and display said virtual purchase environment. (Col 13, line 35 through Col 14, line 25)

c. A fulfillment module configured to receive purchase orders from a panelist. (Col 36, line 65 through Col. 38, line 37)

d. A research module in communication with said panelist interface, said research module configured to enable selective control and manipulation of the virtual purchase environment and configured to receive panelist input from said panelist interface to facilitate analysis thereof. (Col. 15, line 48 through Col 17, line 35)

Claim 15:   Blinn discloses the marketing and product testing system of claim 14, wherein said system is configured to provide a predetermined virtual purchase environment to a plurality of panelists to accommodate parallel testing of a product. (Col 8, lines 11 – 17)

Claim 16: Blinn discloses the marketing and product testing system of claim 14, wherein said system (is capable of being) configured to facilitate market testing of an identifiable characteristic of a product. (This claim is merely a recitation of the inventions intended use, Blinn contains all the components necessary to be used in market testing of an identifiable characteristic of a product, such as its price or location on the dynamically generated page.) (eg. the effect on the sales of a watch given its placement on the page in relationship to other watches also displayed) (Col 7, line 53 through Col 8, line 62)

Claim 17: Blinn discloses the marketing and product testing system of claim 14, wherein at least one of the following characteristics of said plurality of competitive products generated within said virtual purchase environment is configured to be manipulated including a change in: price, packaging, orientation, arrangement, shelf positioning and aisle positioning. (Col 3, line 37 through Col 4, line 14)

Claim 18: Blinn discloses the marketing and product testing system of claim 14, wherein said generation of said virtual purchase environment is based at least in part on panelist input received. (Col 8, lines 11 – 17)

Claim 19: Blinn discloses the marketing and product testing system of claim 14, wherein said research module is configured to provide analysis of a characteristic of an identifiable product displayed among said plurality of products. (Col 15, line 48 through Col 17, line 35)

Claim 20:   Blinn discloses the marketing and product testing system of claim 14, wherein said system further comprises tools for allowing real-time manipulation of the virtual purchase environment, said real-time manipulation based at least in part on real-time panelist's input collected from interfacing with a panelist. (Col 7, line 53 through Col 7, line 62)

Claim 21:   Blinn discloses the marketing and product testing system of claim 14, further comprising a delivery module having executable instructions to implement the delivery of products according to said purchase orders. (Col 36, line 65 through Col 38, line 37)

Claim 22:   Blinn discloses a method of providing an in-channel marketing and product testing system comprising the steps of:

   a. Providing a purchase environment module having instructions for generating a virtual purchase environment comprising a plurality of competitive products. (Col 12, line 63 through Col 13, line 34)

   b. Providing a panelist interface configured to receive panelist input, said panelist interface arranged in selective communication with said purchase environment module to receive and display the virtual purchase environment. (Col 13, line 35 through Col 14, line 25)

   c. Displaying said virtual purchase environment to at least one panelist in communication with said panelist interface. (Col 7, line 53 through Col 8, line 62)

    d. Collecting a panelist's interactions with said virtual purchase environment

       through panelist's input into said panelist interface. (Col 23, lines 16 – 42)

    e. Providing a fulfillment module configured to receive purchase orders from

       said panelist interface. (Col 36, line 65 through Col 38, line 37)

    f. Providing a research module in communication with said purchase

       environment module and said panelist interface to collect said panelist

       input from said panelist interface (Col 15, line 48 through Col 17, line 35)

Claim 23:   Blinn discloses the method of claim 22, further comprising

the step of facilitating the analysis of said collected data with respect to a

characteristic of an identifiable product displayed among said plurality of products.

(Col 15, line 48 through Col 17, line 35)

Claim 24:   Blinn discloses the method of claim 22, further comprising

the step of manipulating at least one of the identifiable characteristics of said

products including: price, packaging, orientation, arrangement, shelf positioning and

aisle positioning. (Col 3, line 37 through Col 4, line 14)

Claim 25:   Blinn discloses the method of claim 22, further comprising

the step of generating the display of said virtual purchase environment based at

least in part on panelist's input received. (Col 7, line 53 through Col 8, line 62)

Claim 26:   Blinn discloses the method of claim 22, further comprising

the step of providing a delivery module having executable instructions to implement

the delivery of products according to said purchase orders. (Col 36, line 65 through

Col. 38, line 37)

Claim 27:   Blinn discloses a method of collecting data relating to an

identifiable characteristic of a product comprising:

    a. Providing a purchase environment module having instructions for

        generating a virtual purchase environment. (Col 12, line 63 through Col

        13, line 34)

    b. Providing a panelist interface configured to receive panelist input and

        configured to receive and display the virtual purchase environment. (Col

        13, line 35 – Col 14, line 25)

    c. Providing a panelist with at least one question relating to an identifiable

        characteristic of a product and receiving an answer to at least one of said

        questions through said panelist interface. (e.g. shopper_size is an

        identifiable characteristic of a product, since many products are available

        in various sizes.) (Col 23, lines 16 – 42)

    d. Generating and displaying a virtual purchase environment based at least

        in part on said answer to said question. (Col 8, lines 11 – 62)

    e. Collecting a panelist's interactions with said virtual purchase environment.

        (Col 23, lines 16 – 42)

    f. Providing a research module in communication with said panelist interface

        to receive panelist input relating to said interaction with said system. (Col

        15, line 48 through Col 17, line 35)

Claim 28:   Blinn discloses the method of collecting data in claim 27,

further comprising the step of manipulating at least one of the characteristics of said

products including: price, packaging, orientation, arrangement, shelf positioning and

aisle positioning. (Col 3, line 37 through Col 4, line 14)

Claim 29:   Blinn discloses the method of claim 27, further comprising

the step of providing a fulfillment module having executable instructions configured

to receive purchase orders entered by a panelist through said panelist interface. (Col

36, line 65 through Col 38, line 37)

Claim 30:   Blinn discloses the method of claim 27, further comprising

the step of providing a delivery module having executable instructions to implement

the delivery of products according to said purchase orders. (Col 36, line 65 through

Col 38, line 37)

Claim 31:   Blinn discloses a computer-readable medium containing

instructions for controlling a computer system to provide an in-channel marketing

and product testing system, by:

a. Generating a signal for transmitting a virtual purchase environment

   comprising a plurality of competitive products. (Col 12, line 63 through Col

   13, line 34)

b. Providing the transmission signal to a panelist interface configured to

   receive panelist input, said panelist interface configured to receive and

   display said virtual purchase environment. (Col 13, line 35 through Col 14,

   line 25)

c. Displaying said virtual purchase environment to at least one panelist in communication with said panelist interface. (Col 13, line 35 through Col 14, line 25)

d. Collecting a panelist's interactions with said virtual purchase environment through panelist input into said panelist interface. (Col 23, lines 16 – 42)

e. Providing a fulfillment module configured to receive purchase orders from said panelist interface. (Col 36, line 65 through Col 38, line 37)

f. Analyzing collected panelist's input in a research module in communication with said purchase environment module and said panelist interface. (Col 15, line 48 through Col 17, line 35)

Claim 32:   Blinn discloses the method of claim 31, further comprising the step of manipulating the display of said virtual purchase environment in real-time. (Col 13, line 35 through Col 14, line 63)

Claim 33:   Blinn discloses a method in a computer system for providing an in-channel marketing and product testing system, comprising the steps of:

a. Providing a purchase environment module having instructions for generating a virtual purchase environment comprising a plurality of competitive products. (Col 12, line 63 through Col 13, line 34)

b. Providing a panelist interface configured to receive panelist input, said panelist interface arranged in selective communication with said purchase environment module to receive and display the virtual purchase environment. (Col 13, line 35 through Col 14, line 25)

   c. Displaying said virtual purchase environment to at least one panelist in

communication with said panelist interface. (Col 7, line 53 through Col 8,

line 62)

   d. Collecting a panelist's interactions with said virtual purchase environment

through panelist input into said panelist interface. (Col 23, lines 16 – 42)

   e. Providing a fulfillment module configured to receive purchase orders from

said panelist interface. (Col 36, line 65 through Col 38, line 37)

   f. Providing a research module in communication with said purchase

environment module and said panelist interface, to collect panelist input

from said panelist interface to facilitate analysis thereof. (Col 15, line 48

through Col 17, line 35)

Claim 34:   <u>Blinn</u> discloses the method of claim 33, further comprising

the step of manipulating at least one of the characteristics of said products including:

price, packaging, orientation, arrangement, shelf positioning and aisle positioning.

(Col 3, line 37 through Col 4, line 14)

Claim 35:   <u>Blinn</u> discloses a computer data signal embodied in a

transmission medium comprising:

   a. A source code segment, which generates a virtual purchase environment

comprising a plurality of competitive products. (Col 12, line 63 through Col

13, line 34)

    b. Said data signal further comprising a source code segment for soliciting

       and receiving panelist input from within said virtual purchase environment.

       (Col 13, line 35 through Col 14, line 25)

    c. Said source code being transmitted to a panelist interface configured to

       receive said panelist input, said panelist interface configured to receive

       and display said virtual purchase environment. (Col 13, line 35 through

       Col 14, line 25)

Claim 36:   Blinn discloses a method of using a panelist interface for

accessing an in-channel marketing and product testing system, comprising the steps

of:

    a. Providing a panelist an identification record. (Col 23, lines 16-42)

    b. Allowing a panelist in communication with said panelist interface to access

       said system via panelist input comprising said identification record. (Col 7,

       line 64 through Col 8, line 62)

    c. Displaying a virtual purchase environment comprising a plurality of

       competitive products to the panelist in communication with said panelist

       interface. (Col 12, line 63 through Col 13, line 34)

    d. Collecting a panelist's interactions with said virtual purchase environment

       through panelist input into said panelist interface in communication with a

       research module and configured to receive said panelist input to facilitate

       analysis thereof. (Col 15, line 48 through Col 17, line 35)

    e. Providing a fulfillment module configured to receive purchase orders from

       said panelist interface. (Col 36, line 65 through Col 38, line 37.)

Claim 37:   Blinn discloses a computer-readable medium containing a

data structure for providing an in-channel marketing and product testing system

comprising:

    a. Providing a purchase environment module having instructions for

       generating a virtual purchase environment comprising a plurality of

       competitive products. (Col 12, line 63 through Col 13, line 34)

    b. Said virtual purchase environment being capable of being manipulated in

       real-time. (Col 13, line 35 through Col 14, line 63)

    c. Providing a panelist interface configured to receive panelist input, said

       panelist interface arranged in selective communication with said purchase

       environment module to receive and display the virtual purchase

       environment. (Col 13, line 35 through Col 14, line 63)

    d. Displaying said virtual purchase environment to at least one panelist in

       communication with said panelist interface. (Col 7, line 53 through Col 8,

       line 62)

    e. Collecting a panelist's interactions with said virtual purchase environment

       through panelist input into said panelist interface. (Col 23, lines 16 – 42)

    f. Providing a research module in communication with said purchase

       environment module and said panelist interface, to collect panelist input

from said panelist interface to facilitate analysis thereof. (Col 15, line 48

through Col 17, line 35)

Claim 38:   Blinn discloses the method of claim 37, further comprising

the step of providing a fulfillment module having executable instructions configured

to receive purchase orders entered by a panelist through said panelist interface.

(Col 36, line 65 through Col 38, line 37)

Conclusion

10.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Colvin Sr. (U.S. Patent Number: 5,825,881), which discloses an in-channel

marketing system that provides product manipulation.

Abelow (U.S. Patent Number: 5,999,908), which discloses the use of consumer

input for product design and testing utilizing an electronic medium.

11.   Any inquiry concerning this communication or earlier communications from

the examiner should be directed to John Van Bramer whose telephone number is

(571) 272-8198. The examiner can normally be reached on 9am - 5pm Monday

through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax

phone number for the organization where this application or proceeding is assigned

is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR

only. For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jvb

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